

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 12, 2001
at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 559, HB 560, 3/7/2001

HEARING ON HB 559

Sponsor: REP. MARK NOENNIG, HD 9, BILLINGS

Proponents: Ronda Carpenter, Lobbyist, MT. Housing Providers
Chip Watts, Glentana Mobile Court, Billings
Ken Manning, Mobile Court, Kalispell
Peggy Trenk, MT. Assoc. of Realtors
Ronny Roach, Landlord, Great Falls
Vern Fischer, MT. Landlord Assoc., Great Falls

Rick Linafelter, President, Landlord Assoc.
Arnold Schlagel, Investment Property Mgmt. Great Falls

Jack Barrett, MT. Landlord Assoc. Kalispell
John VanNorman, MT. Landlord Assoc., Billings
Montana Watts, MT. Landlord Assoc. Billings
Ed McHugh, McHugh Mobile Home Park, Helena

Opponents: **Derek Birnie, Executive Director, MT. Peoples Action**
 Melinda Hintz, MT. Peoples Action, Missoula
 Alana Mueller, MT. Peoples Action, Missoula
 Mary Brochard, MT. Peoples Action, Missoula
 Judy Shelby, MT. Peoples Action, Missoula
 Klaus Sitte, Representing Self
 Wendy Young, WHEEL Group

Opening Statement by Sponsor:

REP. MARK NOENNIG, HD 9, BILLINGS, explained this bill clarifies the landlord and tenant law as it relates to the owners of mobile home parks. He said this bill does not eliminate the requirement for just cause when a person is evicted from a mobile home park. He mentioned the Montana Landlord and Tenant Act and expressed no relation pertaining to landlords, tenants and mobile home parks. He said there needs to be a reason for the landlord to terminate a tenant's home from the mobile home park. He pointed to the changes in the bill and went through each to clarify the changes to the committee.

Proponents' Testimony:

Ronda Carpenter, Lobbyist, MT. Housing Providers, explained what the intentions of this bill were and how it should assist mobile home park areas. She mentioned the changes in the bill and the notice periods pertaining to rent due as well as the filing involved with this. She said there is a difficulty with cash flow when mortgage payments are due and this needs more clarification within the bill. She felt by changing the notice period would be easily defined and assist landlords and tenants living in these mobile home parks. She stated this bill allows for just cause eviction to be used.

Chip Watts, Glentana Mobile Court, Billings, handed out rental agreement information **EXHIBIT(jus56a01)**. He explained an incident dealing with an eviction from the mobile home park. He expressed the need for the change in notice period since many renters are late with payments and may receive these evictions.

Ken Manning, Mobile Court, Kalispell, handed out letters for committee members **EXHIBIT(jus56a02)**. He asked for support of this bill.

Peggy Trenk, MT. Assoc. of Realtors, handed in her testimony **EXHIBIT(jus56a03)**.

{Tape 1; Side B}

Ronny Roach, Landlord, Great Falls, supported this bill because he felt it brought clarity with defining the law and both parties would assist from this bill.

Vern Fischer, MT. Landlord Assoc., Great Falls, felt this bill would strengthen the issues that have happened in the past and he urged a do pass vote from the committee.

Rick Linafelter, President, Landlord Assoc., supported the bill and asked for the committee to pass it.

Arnold Schlagel, Investment Property Mgmt. Great Falls, requested the committee to vote yes on this bill.

Jack Barrett, MT. Landlord Assoc. Kalispell, was concerned about the present renters that are obeying the rules set forth from his mobile home park. He thought this bill was good legislation and needed to be passed.

John VanNorman, MT. Landlord Assoc., Billings, supported the bill and urged the committee to accept it.

Montana Watts, MT. Landlord Assoc. Billings, thanked the committee for their cooperation and urged a do pass for this bill.

Ed McHugh, McHugh Mobile Home Park, Helena, explained two incidences pertaining to evicting renters. He said this bill helps decipher the law to assist landlords and it is needed.

Opponents' Testimony:

Derek Birnie, Executive Director, MT. Peoples Action, felt concerned about this bill since it deals with low income housing participants. He stated the issues should be to improve the rights of mobile home parks, but this bill doesn't add those changes. He said this bill adds a balance of power to the landlord over the tenant. He said the Montana Landlord and Tenant Act should not be used for legislation of public safety and criminal law.

Melinda Hintz, MT. Peoples Action, Missoula, handed in her testimony **EXHIBIT(jus56a04)** and information pertaining to the landlord-tenant act **EXHIBIT(jus56a05)**.

Alana Mueller, MT. Peoples Action, Missoula, read a letter from a renter of a mobile home park **EXHIBIT(jus56a06)**.

Mary Brochard, MT. Peoples Action, Missoula, explained how she wanted to buy another mobile home and the process it involved. She didn't think this bill to be necessary and asked the committee for a do not pass.

Judy Shelby, MT. Peoples Action, Missoula, handed out information regarding the hurts of tenants **EXHIBIT(jus56a07)**. She felt this bill was unnecessary and unfair allowing landlords new responsibilities and hurting the tenants.

{Tape 2; Side A}

Klaus Sitte, Representing Self, said he worked with the complete revision of the Montana Landlord and Tenant Laws back in 1975 during the legislature. He felt dismayed by this bill stating it breaks the long tradition of input between landlords and tenants. He said this bill breaks away from carefully balanced tradition and widens the space between landlords and tenants. He expressed the need to work on a bill that would strengthen these laws and how attorneys rarely work with these cases of eviction. He pointed out the significant change pertaining to a tenant to be evicted if they would not be able to pay attorney's fees. He urged a strong do not pass for this bill.

Wendy Young, WHEEL Group, mentioned the low income tenants living in these mobile home parks and how this bill becomes unfair to their rights. She thought a better solution between tenants and landlords should be found and this bill should not pass.

Questions from Committee Members and Responses:

SEN. STEVE DOHERTY asked about the proposals wondering which were confusing and contradictory. **Klaus Sitte** explained the distinction of the rental agreement and the notice of agreement.

SEN. DOHERTY asked specifics of any other contradictory language. **Klaus Sitte** said it does not clarify where it should clarify.

SEN. DOHERTY asked if he could point out where the language wasn't clarifying. **Klaus Sitte** said this bill doesn't allow for

clarification and it needs issues addressed. He said the issues would be with the rules of the mobile home park.

SEN. DOHERTY asked why the attorney's fees were reciprocal. **REP. NOENNIG** commented on the last question stating it deals with current law. He then replied the attorney's fees from 70-24-442 of the Montana Act are discretionary fees to the party involved. He stated the language being discussed is a narrow circumstance where a tenant is in default for failure to pay rent.

SEN. JERRY O'NEIL asked if the attorney's fees would be for the landlord or prevailing party. **REP. NOENNIG** said with current law the court has discretion to award attorney's fees to the prevailing party.

SEN. O'NEIL mentioned an incident with a tenant and the sewer system not working. He asked if the tenant refused rent would the landlord receive attorney's fees. **REP. NOENNIG** said whether or not the tenant held the rent is a separate issue. He said the landlord is liable under the code and would be responsible for paying the tenant's attorney's fees.

SEN. O'NEIL suggested an amendment explaining the prevailing party. **REP. NOENNIG** said it wouldn't assist the bill because this is a narrow incidence that occurs.

SEN. O'NEIL said this incidence should have a provision in the law dealing with the reason to not pay rent. **REP. NOENNIG** explained essential services withheld and how the tenant can give a notice to the landlord.

SEN. O'NEIL said the renter withheld paying rent until the landlord would take care of the problem and the renter ended up paying attorney's fees, he felt the prevailing party would have to pay attorney's fees according to the court's discretion. **REP. NOENNIG** agreed the prevailing party should have to pay the fees in this type of incidence.

CHAIRMAN GROSFIELD asked if this bill required reasonable attorney fees and who decides what is reasonable attorney's fees would be. **REP. NOENNIG** said this bill allows the person to pay full amount to avoid forfeiture.

CHAIRMAN GROSFIELD asked if the tenant had to pay attorney's fees on top of paying rent plus if the landlord prevailed in a court case would that be possible. **REP. NOENNIG** said it could be possible, but didn't sound reasonable. He said the court would decide the fees and he pointed out the three day notice and the time of the complaint being filed.

CHAIRMAN GROSFIELD thought if this bill passed and the landlord received the attorney's fees then the landlord should turn it over to the attorney after the three day notice period. **REP. NOENNIG** said they are responsible to pay the attorneys whether they collect the fees or not.

{Tape 2; Side B}

CHAIRMAN GROSFIELD asked, regarding the incident that was mentioned from one of the proponent's testimony, how to justify between a dispute of a landlord and tenant or a crime. **REP. NOENNIG** said if a crime was involved then there wouldn't be an eviction. **Ronda Carpenter** said with this incidence the tenant was the perpetrator, but the victim could not be evicted due to the law that provides protection of the tenants.

CHAIRMAN GROSFIELD asked if this is a small percentage of tenants needing to be evicted and is it generally tenants who own their own mobile home. **Ronda Carpenter** said this section of the law does not apply to those who own the mobile home. She explained if someone rents a mobile home then they fall under the Landlord-Tenant Act and are provided with this section of the bill.

CHAIRMAN GROSFIELD asked who this bill applies to. **Ronda Carpenter** answered only the owners of mobile homes who rent spaces in a mobile home park.

CHAIRMAN GROSFIELD asked about the three day notice period and how this is effective. **Ronda Carpenter** explained the eviction process and options for tenants.

SEN. DOHERTY asked if the time frames were accurate and if they can be changed. **Klaus Sitte** said the sequence of events is accurate and applies only in one-tenth of evictions that would take place.

Closing by Sponsor:

REP. MARK NOENNIG, HD 9, BILLINGS, summarized the bill and the changes that would assist the landlord. He felt this bill to be balanced and fair. He said there is no effect to duties of a landlord and this bill would offer assistance between the tenant and a landlord.

HEARING ON HB 560

Sponsor: **REP. MARK NOENNIG, HD 9, BILLINGS**

Proponents: Stan Kalezyck, Attorney, Helena

Opponents: None

Opening Statement by Sponsor:

REP. MARK NOENNIG, HD 9, BILLINGS, said the purpose of this bill is to reduce cost of litigation, settlement of claims and to reduce frivolous lawsuits. He explained how one party could settle in a case and the other party would have the best interests of clients. Allowing one party to make an offer to the other party to settle a case. He read a letter from a district judge **EXHIBIT(jus56a08)**. He stated this bill would cover cases involving less than a \$50,000 claim and the costs would be minimal.

Proponents' Testimony:

Stan Kalezyck, Attorney, Helena, said he represents the Montana Insurance Authority Group and the group supports this bill. He felt this bill has a limited application and the benefit forces both plaintiffs and defendants to be realistic in evaluating their cases.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DOHERTY asked if this would apply to both plaintiffs and defendants and how to determine judgement. **REP. NOENNIG** said this language is current law. He said the judgement would deal with the settlement and it becomes favorable.

SEN. DOHERTY thought this would only work in a bifurcated trial. He didn't understand how this bill would do any good dealing with Subsection 2 if a bifurcated trail was followed. **REP. NOENNIG** said this language is current law and would work in a bifurcated trail.

SEN. DOHERTY asked if a written offer to settle should be accepted as well as a written offer of saying no. **REP. NOENNIG** thought the language stated this within the bill. He said if the offer was not accepted in writing then there would need to be a rejection.

SEN. O'NEIL asked about offering an amendment to strike Section 4 from this bill. **REP. NOENNIG** said if Section 4 was struck then lobbyists and legislatures would resist the bill and it may die.

SEN. O'NEIL asked if this capability is already available. **REP. NOENNIG** said no.

SEN. O'NEIL asked if it was found under Rule 68. **REP. NOENNIG** said that rule applies to costs only and defendants offers only.

SEN. O'NEIL asked if rules of court are determined and is there authority to pass this bill. **REP. NOENNIG** did not believe this bill would superseded Rule 68 and this bill is a settlement bill.

SEN. HOLDEN asked how this would affect the plaintiff and client. **REP. NOENNIG** said this bill does not apply to personal injury claims.

SEN. HOLDEN asked if it was mentioned in Section 4. **REP. NOENNIG** answered yes.

SEN. HOLDEN asked for clarification of types of claims this bill is to include. **REP. NOENNIG** said it includes trespass, contract, oral contracts, easement claims to mention a few.

SEN. HOLDEN asked about a property loss claim and if it would be covered by the bill. **REP. NOENNIG** said if it is real estate, it would be.

SEN. HOLDEN asked if the plaintiff is awarded \$10,000 how would this effect the outcome. **REP. NOENNIG** said it depends upon the offer.

SEN. GRIMES wondered how this bill would fit for the plaintiff. He asked what would happen if the plaintiff decided to settle for a little less under an oral agreement. **REP. NOENNIG** said these type of offers could not be made until after 60 days the complaint has been served.

SEN. GRIMES asked if it was limited to \$50,000 cases. **REP. NOENNIG** answered the fair offer is to be taken.

{Tape 3; Side A}

Closing by Sponsor:

REP. MARK NOENNIG, HD 9, BILLINGS, closed on his statements of the bill and added this bill assists the complaint process. He felt this bill would work and it helps the image of the profession involved.

ADJOURNMENT

Adjournment: 12:10 P.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus56aad)